

William J. Honan (WJH 1922)
Michael J. Frevola (MJF 8359)
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195 Broadway
New York, NY 10007-3189
(212) 513-3200

ATTORNEYS FOR PLAINTIFF
WILHELMSEN PREMIER MARINE FUELS AS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILHELMSEN PREMIER MARINE FUELS AS,

Plaintiff,

-against-

UBS PROVEDORES PTY LTD. a/k/a
USS-UBS INTERNATIONAL and
RAECORP INTERNATIONAL PTY LTD.,

Defendants.

07 Civ. 5798 (CM)

**AFFIDAVIT OF
RONALD H. USCER IN
SUPPORT OF PLAINTIFF'S
AMENDED MOTION TO
VACATE DISMISSAL ORDER**

District of Columbia)
) ss:
City of Washington)

Ronald H. Uscher, being duly sworn, deposes and says:

1. I am a member of the firm of Peckar & Abramson, P.C. I have been retained by plaintiff Wilhelmsen Premier Marine Fuels AS ("Wilhelmsen") to provide counseling on federal government procurement issues pertaining to the referenced matter.

2. I am familiar with the facts and circumstances underlying this dispute and my statements are based upon my own personal knowledge.

3. I provide this affidavit in support of Wilhelmsen's amended application to vacate the Order of Dismissal with prejudice dated January 14, 2008 granted in favor of Defendants UBS Provedores Pty Ltd. a/k/a USS-UBS International ("UBS") and RaeCorp International Pty Ltd.

4. I was retained by Wilhelmsen in January 2008 after the parties had executed their Settlement Agreement dated October 22, 2007 (the "Settlement Agreement"), for the purpose of making inquiries with the U.S. Government, and specifically the Defense Energy Support Center ("DESC"), as to the status of UBS' claims pending before the DESC for UBS' fueling services provided to U.S. Government vessels in Sasebo and Naha, Japan. The parties' Settlement Agreement, annexed as Exhibit #1 to the van Hemmen Certification dated February 1, 2008 filed with this Court (Document #35), provides in relevant part that:

WHEREAS, UBS has submitted a claim to the U.S. government under its contract with the Defense Energy Support Center in the amount of THREE MILLION ONE HUNDRED EIGHTY THOUSAND EIGHT HUNDRED FIFTY THREE DOLLARS AND FIFTY-EIGHT CENTS (\$3,180,853.58), *relating to amounts invoiced pursuant to invoice number 10039* and concerning the bunkering [claimed in Wilhelmsen's Verified Amended Complaint], which claim presently is under review by the U.S. government (the "Government Claims")

* * *

6. In addition to the Initial Payment and the Second Payment, UBS will pay to Wilhelmsen TWO MILLION EIGHTY-SEVEN THOUSAND EIGHT HUNDRED NINETY-ONE DOLLARS AND SEVENTY-FIVE CENTS (\$2,087,891.75), *which payment will become due when the U.S. Government pays the Government Claims to UBS*. UBS warrants that it will use its best endeavors to recover from the U.S. government on the Government Claims and will provide to Wilhelmsen copies of its application for the Government Claims as well as a full record of its correspondence with the

U.S. government concerning the Government Claims. The Parties agree that this amount *will be paid in full from the Government Claims payment before UBS is entitled to keep any of the Government Claims payment for itself.* . . .

Van Hemmen Certification dated Feb. 1, 2008 (Document #35), Ex. 1, at pp. 1, 4 (emphasis added).

5. On January 30, 2008, I served DESC with a request for documents pursuant to the Freedom of Information Act ("FOIA") relating to the contract between DESC and UBS designated as Contract 06-D-0391 (the DESC/UBS Contract"). A true copy of my FOIA request is annexed as Exhibit 1.

6. On February 1, 2008 and February 8, 2008 I received copies of UBS' documents produced to Wilhelmsen's New York counsel, Holland & Knight LLP, as part of the parties' Settlement Agreement. On February 1, 2008, I received a total of 8 pages of documents. On February 8, 2008, I received a total of 72 pages of documents. These documents appeared incomplete and redacted important financial information.

7. I use the term "incomplete" with regard to the word "claims" because, while DESC and UBS apparently treated these documents as "claims" in the sense that UBS is seeking extra compensation, these documents are not "claims" as that term is used in government contracting. The main difference is that documents produced by UBS' counsel did not contain a written claim certification by UBS as required by the Contract Disputes Act (CDA), 41 U.S.C. §605(c), and the Federal Acquisition Regulations ("FAR"), 48 C.F.R. §33.207. In addition, the documents do not appear to reference any bunkering claimed in Wilhelmsen's Verified Amended Complaint (part of the "Government Claims"). Because the documents produced by

UBS did not appear to qualify as a "claim" under CDA rules, and because the redactions and apparent omissions made it difficult to confirm that the documents produced by UBS pertained to the "Government Claims" referenced in the parties' Settlement Agreement, I requested that Wilhelmsen's New York counsel write to UBS' counsel to question the completeness of UBS' document production, which letter I was copied on and was dated April 2, 2008.

8. Returning to the FOIA requests, on February 21, 2008 I served an amended FOIA request on DESC. A true copy of the February 21, 2008 FOIA request is annexed as Exhibit 2.

9. On March 14, 2008, I received an interim reply to my FOIA request to DESC. DESC's interim reply provided the status of DESC's efforts in producing the various records we had requested. As is often the case with FOIA requests, some records were capable of being released, while others were deemed not to be releasable. In that reply, DESC provided previously unseen documents which suggested that UBS has been paid for its Government Claims but has failed to advise Wilhelmsen.

10. One of the documents produced by DESC on March 14, 2008 was Modification P00004 of September 24, 2007 ("Mod. 4"), which is a modification to the DESC/UBS Contract and which summarizes the history of UBS' March 8, 2007 claim in the amount of \$3,550,783.66 related to UBS' performance under the DESC/UBS Contract at Sasebo. A true copy of Mod. 4 is annexed as Exhibit 3. Mod. 4 provides, in pertinent part, that:

2. Pursuant to subsequent review of the claim and responses from all concerned parties, the Contracting Officer has determined that the subject claim is valid and the *Contractor [i.e., UBS] will be paid the amount of \$3,550,783.66.*

TOTAL SUM to be paid: \$3,550,783.66

See Exhibit 3, p. 2 (first emphasis added).

11. Another document produced by DESC on March 14, 2008 was Modification P00005 of November 7, 2007 ("Mod. 5"), which is a modification to the DESC/UBS Contract and which summarizes the locations for fueling services initially awarded to UBS and those locations in which UBS defaulted on its obligations under the DESC/UBS Contract. A true copy of Mod. 5 is annexed as Exhibit 4. The modification provides, in select parts, that:

5. WHEREAS, the Contractor [i.e., UBS] has repeatedly demonstrated that it does not understand the terms and conditions of the contract, particularly by filing claims for ancillary charges to which, in accordance with the contract, it is not entitled

* * *

7. NOW THEREFORE, as a result of the above-mentioned defaults . . . the contract is hereby terminated for cause

8. The Government acknowledges that the contractor has no obligation to make further deliveries under the contract. The Government reserves all rights and remedies under the contract and those provided by law, including, without limitation, the right to claim damages for any previous delivery of fuel.

See Exhibit 4, pp. 3-4.

12. After receiving these documents, on March 19, 2008 I called Kay Bushman, Esq., an attorney in DESC's Office of General Counsel who is assigned to the DESC/UBS Contract claims. During our conversation, Ms. Bushman confirmed that UBS was paid the claim amount of \$3,550,783.66, which she believed had occurred sometime in late December 2007. Based on the foregoing documents and my follow-up telephone conference with Ms. Bushman, the following conclusions can be reached.

- a. Mod. 4 documents DESC's agreement that UBS' Sasebo claim was valid and that DESC paid UBS \$3,550,783.66 for that claim;
- b. UBS must have submitted a formal claim to DESC that complied with the procurement rules for claims (FAR 33.206). In my experience, had a claim of this magnitude not been certified as required under the law, DESC would not, and perhaps even could not, agree to pay the claim; and
- c. The claims on which UBS was paid most likely were the "Government Claims" referenced in the Settlement Agreement, thus obligating UBS to pay Wilhelmsen the \$2,087,891.75 owed to Wilhelmsen under numbered paragraph 6 of the Settlement Agreement. My conclusions as to why UBS was paid on the Government Claims follow.

13. The Government Claims referenced in numbered paragraph 6 of the Settlement Agreement are defined in the second "Whereas" clause of the Settlement Agreement as follows:

UBS has submitted a claim to the U.S. Government under its contract with the Defense Energy Support Center in the amount of THREE MILLION ONE HUNDRED EIGHTY THOUSAND EIGHT HUNDRED FIFTY-THREE DOLLARS AND FIFTY-EIGHT CENTS (\$3,180,853.58), relating to amounts invoiced pursuant to invoice number 10039 and concerning the bunkering reflected in Exhibit 1, which claim is presently under review by the U.S. Government (the "Government Claims").

14. Documents produced to us by UBS include a cover sheet entitled "Sasebo Claim" dated "07 March, 2007" followed by a claim letter of the same date and a document designated "Tax Invoice 10039" which purports to invoice the Government for "1 Each Claim Dated 7th March, 2007." True copies of these documents are annexed as Exhibit 5.

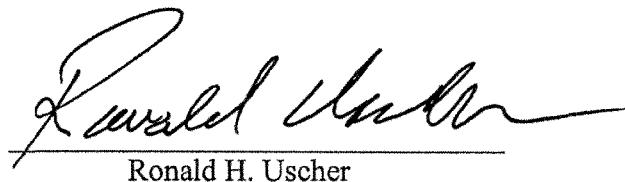
15. While the claim amounts on these documents enclosed as Exhibit 5 are redacted, the "Sasebo Claim" dated 07 March, 2007 clearly is the "Claim Dated 7th March, 2007" referred to in Tax Invoice 10039. In turn, Tax Invoice 10039 clearly is the "invoice number 10039" referred to in the second "Whereas" clause of the Settlement Agreement. Therefore, it follows that the "Sasebo Claim" dated 07 March, 2007 is the "Government Claims" referred to in the Settlement Agreement, and that Wilhelmsen is entitled to be paid \$2,087,891.75 from the Government's payment of the Sasebo Claim.

16. This conclusion is supported by the response of UBS' counsel to Wilhelmsen's New York counsel's April 2, 2008 letter questioning the completeness of UBS' document production. It is my understanding that UBS' counsel replied: "My client confirms that UBS has produced all claims related documents." This confirms that the Sasebo Claim pertaining to Tax Invoice 10039, contained in the documents produced by UBS, must be the "Government Claims" referred to in the parties' Settlement Agreement. (The documents produced by UBS contain no other Sasebo claim). Because the Government has paid \$3,550,783.66 on the Sasebo claim, I believe that UBS most likely has been paid on the "Government Claims."

17. It is my understanding that UBS' counsel provided to Wilhelmsen's New York counsel a UBS document titled "Tax Invoice 10454," which UBS' counsel contended established that the payment to UBS was not related to the "Government Claims." I have annexed a true copy of this document as Exhibit 6. Tax Invoice 10454 is not proof that DESC paid the \$3,550,783.66 on a claim other than the Sasebo Claim originally submitted under Tax Invoice 10039. Tax Invoice 10454 merely invoices for the already agreed-upon Mod. 4 amount, as can be seen by the reference in the Invoice to Mod. 4 and by the date of the Invoice (9/24/07), which is the same as DESC's execution of Mod. 4.

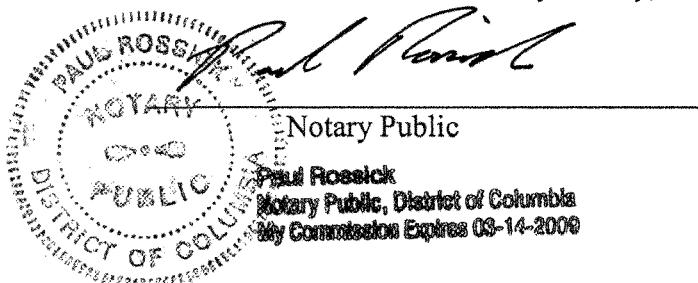
18. Because UBS has redacted all financial information from Tax Invoice 10039 and apparently has not produced any claim documents pertaining to the bunkerings claimed in Wilhelmsen's Verified Amended Complaint, it is possible that the \$3,550,783.66 agreed to in Mod. 4, and then billed by Tax Invoice 10454, represents payment of those "Government Claims" referenced in the Settlement Agreement. Even if an unredacted Tax Invoice 10039 were to reveal that it was for an amount other than \$3,550,783.66, the difference could still be (a) amounts attributable to the bunkerings claimed in Wilhelmsen's Verified Amended Complaint (the other portion of the "Government Claims") or (b) additional UBS submissions and negotiations that occurred after the initial submission of Tax Invoice 10039.

19. Therefore, Tax Invoice 10454 does not change my conclusion that the claims on which UBS was paid most likely were the "Government Claims" referenced in the Settlement Agreement, thus obligating UBS to pay Wilhelmsen the \$2,087,891.75 owed to Wilhelmsen under numbered paragraph 6 of the Settlement Agreement.



Ronald H. Uscher

Sworn to before me this 20th day of May, 2008.





Peckar & Abramson

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January 30, 2008

By E-Mail: pernie.forehand@dla.mil

Ms. Pernie C. Forehand
Freedom of Information Act Officer
Defense Energy Support Center
8725 John J. Kingman Road, Suite 4950
Ft. Belvoir, Virginia 22060-6222

RE: Freedom of Information Act Request

Dear Pernie:

In accordance with the Freedom of Information Act, 5 U.S.C. §§552 *et seq.*, I hereby request copies of the following records or any reasonably segregable portion thereof:

1. All documents relating to the following bunker deliveries by USS-UBS International under DESC Contract No. SP0600-06-D-0391, including without limitation any performance on behalf of USS-UBS International by or on behalf of Wilhelmsen Premier Marine Fuels:

<u>Date:</u>	<u>Vessel:</u>	<u>CLIN / Location</u>
1/19/07	SS Maj Stephen Pless	765-61 / Sasebo MSC
1/31/07	USNS Sumner	774-61 / Naha, Okinawa
3/5/07	USNS Mary Sears	765-61 / Sasebo MSC
3/20/07	HSV Westpac Express	774-61 / Naha, Okinawa
3/21/07	USNS Bowditch	765-61 / Sasebo MSC
3/26/07	SS Maj Stephen Pless	765-61 / Sasebo MSC
4/9/07	USNS Mary Sears	774-61 / Naha, Okinawa
4/20/07	HSV Westpac Express	774-61 / Naha, Okinawa
4/23/07	USNS Bowditch	774-61 / Naha, Okinawa
5/1/07	SS Cape Jacob	765-61 / Sasebo MSC

2. All documents relating to any invoices or requests for payment by USS-UBS International pertaining to the bunker deliveries listed in No. 1, above.
3. All documents relating to any claims for additional compensation or requests for equitable adjustment submitted by USS-UBS International pertaining to the bunker deliveries listed in No. 1, above.

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Ms. Pernie C. Forehand
January 30, 2008
Page 2

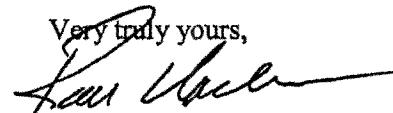
4. All documents pertaining to DESC's review of, evaluation of, or decision on, any claims for additional compensation or requests for equitable adjustment submitted by USS-UBS International pertaining to the bunker deliveries listed in No. 1, above.
5. All documents relating to any payments made to USS-UBS International pertaining to the bunker fuel deliveries listed in No. 1, above, including any payments of any claims or requests for equitable adjustment.
6. All documents relating to any invoices or requests for payment by USS-UBS International under Contract No. SP0600-06-D-0391 which DESC has received by not yet paid or authorized payment of as of the date of DESC's response to this request.
7. All documents relating to any invoices or requests for payment by USS-UBS International under Contract No. SP0600-06-D-0351 which DESC has received but not yet paid or authorized payment of as of the date of DESC's response to this request.
8. Any modifications of Contract SP0600-06-D-0391 issued after P00003.
9. All documents relating to any pre-award survey (FAR 9.106) of USS-UBS International pertaining to the award of either Contract SP0600-06-D-0391 or Contract SP0600-06-D-0351.
10. All documents pertaining to any information received or developed prior to award of Contract SP0600-06-D-0391 pertaining to the cost realism of, or ability to perform at, the prices bid by USS-UBS International on Line Item Nos. 765-61 (Sasebo MSC) and 774-61 (Naha, Okinawa).
11. The abstract of bids of Bid Evaluation Model pertaining to bids for Line Item Nos. 765-61 (Sasebo MSC) and 774-61 (Naha, Okinawa) prior to award of Contract SP0600-06-D-0391.

We will pay all applicable search and duplication costs which may be incurred in responding to this request. Please notify me before these costs exceed \$300. Should you require any additional information or clarification, please call me at (202) 293-8815 (ext. 7110) or e-mail me at ruscher@pecklaw.com.

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Ms. Pernie C. Forehand
January 30, 2008
Page 3

Thank you.

Very truly yours,

Ronald H. Uscher
Attorney for
Wilhelmsen Premier Marine Fuels

Enclosure

cc: Kay Bushman, Esq. kay.bushman@dla.mil
Assistant Counsel
Defense Energy Support Center



Peckar & Abramson

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February 21, 2008

By E-mail: pernie.forehand@dla.mil

Ms. Pernie C. Forehand
Freedom of Information Act Officer
Defense Energy Support Center
8725 John J. Kingman Road, Suite 4950
Ft. Belvoir, Virginia 22060-6222

RE: Revisions to FOIA 08-031
Freedom of Information Act Request

Dear Ms. Forehand:

Pursuant to your conversation today with Nick Hoogstraten of my office, we are revising our January 30, 2008 FOIA request to withdraw certain items and revise certain items. We will restrict our request to the following items (the numbers below correspond to the numbers in our original request):

3. All documents relating to any claims for additional compensation or requests for equitable adjustment submitted by USS-UBS International under Contract SP0600-06-D-0391. (Note: This is a revision to the original No. 3, which was limited to claims or REAs pertaining to certain deliveries only).
4. All documents pertaining to DESC's review of, evaluation of, or decision on, any claims for equitable adjustment submitted by USS-UBS International under Contract SP0600-06-D-0391. (Note: This is a revision to the original No. 3, which was limited to claims or REAs pertaining to certain deliveries only).
5. All documents relating to any payments by DESC of claims or requests for equitable adjustment by USS-UBS International under Contract SP0600-06-D-0391. [Note: This is more limited than the original No. 5, which included documents pertaining to specific deliveries also].
6. All documents relating to any invoices or requests for payment by USS-UBS International under Contract SP0600-06-D-0391 which DESC has received but not yet authorized payment of as of the date of DESC's response to this request.
8. Any modifications of Contract SP0600-06-D-0391 issued after P00003.

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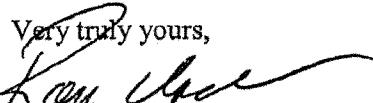
Ms. Pernie C. Forehand

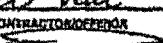
February 21, 2008

Page 2

9. All documents relating to any pre-award survey (FAR 0.106) of USS-UBS International pertaining to the award of either Contract SP0600-06-D-0391 or Contract SP0600-06-D-0351.
10. All documents pertaining to any information received or developed prior to award of Contract SP0600-06-D-0391 pertaining to the cost realism of, or ability to perform at, the prices bid by USS-UBS International on Line Item Nos. 765-61 (Sasebo MSC) or 774-61 (Naha, Okinawa).
11. The abstract of bids or Bid Evaluation Model pertaining to bids for Line Item Nos. 765-61 (Sasebo MSC) or 774-61 (Naha, Okinawa) prior to award of Contract SP0600-06-D-0391.

We will pay all applicable search and duplication costs which may be incurred in responding to this request. Please notify us before these costs exceed \$300. Should you require any additional information or clarification, please call me at (202) 293-8815 or e-mail me at ruscher@pecklaw.com. Thank you.

Very truly yours,

Ronald H. Uscher

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE K	2. PAGE OF PAGES 1 2
2. AMENDMENT/MODIFICATION NO. SP06004	3. EFFECTIVE DATE See Block 10C	4. REQUIREMENT/PURCHASE REQ. NO. N/A	5. PROJECT NO. (if applicable)	
6. ISSUED BY AFFINI Francis Murphy/DESC-PHS Defense Energy Support Center 8725 John J. Kingman Rd., Suite 4950 Pt. Belvoir, VA 22030-0722 TEL: (703) 767-8462/FAX: (703) 767-8506 Purchase Fragment: 3.7.A	CODE SP0600	7. ADMINISTERED BY (If other than Item 6) CODE		
8. NAME AND ADDRESS OF CONTRACTOR (INC. state, city, county, state, and 22P CNAW) UBS PROVEEDORES PTY LTD d/b/a USS-UBS INTERNATIONAL PO BOX 579 QUEENSLAND AUS 4172			9A. AMENDMENT OF SOLICITATION NO.	
Bidder Code: U101 CAGE Code: ZBB12			9B. DATED (REF ITEM 11)	
			10A. MODIFICATION OF CONTRACT ORDER NO. X SP0600-06-D-0391	
			10B. DATED (REF ITEM 11) 21 SEP 2006	
CODE	FACILITY CODE			
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS				
<p><input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers (<input type="checkbox"/> is extended <input checked="" type="checkbox"/>) is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended; by one of the following methods: (a) By completing Items 9 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) by separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PLUG TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and day specified.</p>				
12. ACCOUNTING AND APPROVAL DATA (If required SEE PAGE 2)				
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14. <ul style="list-style-type: none"> <input type="checkbox"/> A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority) THIS CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A. <input type="checkbox"/> B. THE ABOVE NUMBERED CONTRACT ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in pricing after approval/no date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF PAR 63.1(2)(b). <input type="checkbox"/> C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: <input checked="" type="checkbox"/> D. OTHER (Specify type of modification and authority) BILATERAL - PURSUANT TO TERMS & CONDITIONS OF CLAUSE 11.03-6 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (BUNKERS) (DESC JAN 2006), (d) DISPUTES 				
<p>E. IMPORTANT: Contractor (<input checked="" type="checkbox"/> I) is required to sign this document and return <input checked="" type="checkbox"/> copies to the issuing office.</p> <p>14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contact subject matter where feasible)</p> <p>OVERSEAS BUNKERS SP0600-06-0391</p> <p>P.P. 1.3B</p>				
SEE PAGE 2				
15A. NAME AND TITLE OF SIGNER (Type or print) <i>Bill Pace (Director)</i>		15A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) DEBORA D. WOOD Contracting Officer		
15B. CONTRACTOR/OFFEROR 	15C. DATE SIGNED 20-9-07	15D. UNITED STATES OF AMERICA <i>Debora D. Wood</i>	15E. DATE SIGNED 24 Sept 07	
(Signature of person authorized to sign)				

EXHIBIT

3

tabber

SP0600-06-D-0391
P00004
Page 2 of 2

1. On March 8, 2007, USS-UBS submitted a claim under Item 765-61 (Sasebo, Japan) in accordance with FAR 33.206 for \$3,550,783.66 for costs incurred in response to the Government's request for surge capabilities to meet requirements that did not materialize. USS-UBS claimed that it purchased fuel to meet the anticipated surge during the period December 2006 through March 2007, which it subsequently sold at a loss. This claim was processed under contract clause II.03-5(d) DISPUTES and FAR 52.233-1 DISPUTES.
2. Pursuant to subsequent review of the claim and responses from all concerned parties, the Contracting Officer has determined that the subject claim is valid and the Contractor will be paid the amount of \$3,550,783.66.

TOTAL SUM to be paid: \$3,550,783.66

3. The Contractor agrees that this modification settles all claims by the Contractor under the contract relative to Line Item 765-61 arising out of or in any way related to Military Sealift Command's request for surge capacity during the period November 1, 2006 through March 30, 2007, and hereby fully, finally and unconditionally releases and discharges the Government from any and all liability, claims, impact costs, demands, causes of action, and legal expenses, accrued, known or unknown, which the Contractor has or might have relating thereto, including, without limitation, all obligations of the Government to make further payments or to carry out any further undertakings. The Government reserves all rights under the contract, including but not limited to, the right to claim damages for any previous delivery of fuel.
4. All other terms and conditions of the contract remain unchanged.

AMENDMENT OF SOLICITATION/		MODIFICATION OF CONTRACT		CONT	ID CODE	PAGE OF PAGES	
						1	4
2. AMENDMENT/MODIFICATION NO. P00005		3. EFFECTIVE DATE SEE BLOCK 16C		4. REQUISITION/PURCHASE REQ. NO. N / A		5. PROJECT NO. (if applicable)	
6. ISSUED BY DEFENSE ENERGY SUPPORT CENTER 8725 JOHN J. KINGMAN ROAD, SUITE 4950 FORT BELVOIR, VA 22060-6222 BUYER/SYMBOL: FRANCIS MURPHY/ PHONE: (703) 767-8334 FAX: (703) 767-8506 EMAIL: francis.c.murphy@dla.mil Purchase Program 1.3B		CODE SP0600		7. ADMINISTERED BY (if other than item 6)		CODE	
8. NAME AND ADDRESS OF CONTRACTOR (NO., street, city, county, State, and ZIP Code) USS-UBS INTERNATIONAL PO BOX 579 QUEENSLAND AUS, 4170				9a. AMENDMENT OF SOLICITATION NO.			
				9b. DATED (SEE ITEM 11)			
				10a. MODIFICATION OF CONTRACT/ORDER NO. SP0600-06-D-0391			
X BIDDER CODE: U101 CAGE CODE: ZBB12				10b. DATED (SEE ITEM 13) 21 SEP 06			
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS [] The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers [] is extended, [] is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and it is received prior to the opening hour and date specified.							
12. ACCOUNTING AND APPROPRIATION DATA (if required)							
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACT/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.							
A. THIS CHANGE ORDER IS ISSUED PURSUANT TO : (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.							
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b)							
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED PURSUANT TO AUTHORITY OF:							
D. OTHER (Specify type of modification and authority) X UNILATERAL - Pursuant to Clause II.03-5, CONTRACT TERMS & CONDITIONS - COMMERCIAL ITEMS (Bunkers) (DESC JAN 2006) - Paragraph (m), TERMINATION FOR CAUSE							
E. IMPORTANT: Contractor [x] is not, [] is required to sign this document and return _____ copies to the issuing office.							
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)							

SEE CONTINUATION PAGES

EXHIBIT

4

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME OF CONTRACTING OFFICER DEBORA D. WOOD	
15B. NAME OF CONTRACTOR/OFFEROR BY _____ (Signature of person authorized to sign)		15C. DATE SIGNED	16B. UNITED STATES OF AMERICA BY <i>Debora D. Wood</i> (Signature of Contracting Officer)
			16C. DATE SIGNED 7 NOV 07

SP0600-06-D-0391
P00005

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1. WHEREAS, the Contractor, USS-UBS Privedores PTY (USS-UBS) and the Government have entered into Contract SP0600-06-D-0391 under date of 21 September 2006, together with any and all modifications, changes, and supplements thereto (hereinafter referred to as the "Contract");

2. WHEREAS, the Contract contains the following items:

LINE ITEM	DELIVERY LOCATION
202-61	FREEMANTLE, AUSTRALIA
203-61	MELBOURNE, AUSTRALIA
204-61	SYDNEY, AUSTRALIA
516-61	TOWNSVILLE, AUSTRALIA
516-61A	TOWNSVILLE, AUSTRALIA
516-61B	TOWNSVILLE, AUSTRALIA
521-61	DARWIN, AUSTRALIA
521-61A	DARWIN, AUSTRALIA
521-61B	DARWIN, AUSTRALIA
525-61	CAIRNS, AUSTRALIA
525-61A	CAIRNS, AUSTRALIA
525-61B	CAIRNS, AUSTRALIA
530-61	BRISBANE, AUSTRALIA
530-61A	BRISBANE, AUSTRALIA
530-61B	BRISBANE, AUSTRALIA
533-61	PHUKET, THAILAND
555-61B	SHANGHAI, CHINA
557-61B	QINDAO, CHINA
563-61	MUARA, BRUNEI
603-61	ORANJESTAD, ARUBA
628-61	PUERTO LA CRUZ, VENEZUELA
641-61	DA NANG, VIETNAM
642-61	HAIPHONG, VIETNAM
643-61	HO CHI MINH, VIETNAM
660-61	COLUMBO, SRI LANKA
661-61	KOTA KINABALU, MALAYSIA
663-61	KUANTAN, MALAYSIA
664-61	LUMUT, MALAYSIA
672-61	SATTAHIP, THAILAND
673-61	NOUMEA, NEW CALEDONIA
673-611	NOUMEA, NEW CALEDONIA
765-61	SASEBO, JAPAN
774-61	NAHA, JAPAN
948-62	SASEBO, JAPAN
951-61	YOKOHAMA, JAPAN
960-61	MOKPO, SOUTH KOREA
960-62	MOKPO, SOUTH KOREA
983-61	MOMBASSA, KENYA

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3. WHEREAS, the Contractor has defaulted repeatedly on orders, including the following:

ORDER NUMBER	ITEM NUMBER	DELIVERY LOCATION	SHIP NAME	ORDER DATE
1236	951-61	Yokohama, Japan	USNS Victorious	02 OCT 2007
1208	774-61	Naha, Japan	MV Cory Chouest	26 SEP 2007
1117	706-61	Dakar, Senegal	USS Doyle	01 SEP 2007
1057	540-61	Koror, Palau	USS Fitzgerald	16 AUG 2007
1028	774-61	Naha, Japan	Westpac Express	10 AUG 2007
1026	774-61	Naha, Japan	USNS Victorious	09 AUG 2007
1025	774-61	Naha, Japan	Westpac Express	09 AUG 2007
1021	951-61	Yokohama, Japan	MV Sea Venture	08 AUG 2007
1016	948-62	Sasebo, Japan	MV Cape Jacob	07 AUG 2007
814	948-62	Sasebo, Japan	MV Transpacific	08 JUN 2007
746	672-61	Sattahip, Thailand	Westpac Express	17 MAY 2007

4. WHEREAS, a Pre-Award Survey requested by DESC-PHB has recommended "No Award" to the Contractor on the following item:

ITEM NUMBER	LOCATION	PRODUCT
603-61	Oranjestad, Aruba	MGO

5. WHEREAS, the Contractor has repeatedly demonstrated that it does not understand the terms and conditions of the contract, particularly by filing claims for ancillary charges to which, in accordance with the contract, it is not entitled;

6. WHEREAS, Clause I1.03-5, CONTRACT TERMS & CONDITIONS - COMMERCIAL ITEMS (Bunkers) (DESC JAN 2006) – Paragraph (ml), Termination for Cause, allows the Government to terminate for cause contract items under such circumstances;

7. NOW THEREFORE, as a result of the above-mentioned defaults and indications that the Contractor cannot satisfactorily perform under the Contract, the Contract is hereby terminated for cause in its entirety in accordance with Paragraph (m) of Clause I1.03-5, CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (Bunkers) (DESC JAN 2006), and USS-UBS' right to proceed further with performance of these items is terminated.

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8. The Government acknowledges that the contractor has no obligation to make further deliveries under the contract. The Government reserves all rights and remedies under the contract and those provided by law, including, without limitation, the right to claim damages for any previous delivery of fuel.



Wednesday 07 March 2007

**USS – UBS
International**

Head Office
2/50 Borthwick Avenue
Murarrie QLD 4172

Postal
PO Box 579
Morningside QLD 4170
Australia

Phone 61 7 3902 0800
Fax 61 7 3902 0600
Email info@ussubsint.com
Web www.ussubsint.com

ACN 084 475 098
ABN 82 084 475 098

Sasebo Claim



EXHIBIT

5

tabbies®



INTERNATIONAL

**Servicing the World
from Australia**

Wednesday, March 07, 2007

Debora Wood
Contracting Officer
Defense Energy Support Center
8725 John J Kingman Rd
Ft. Belvoir VA 22060

RE: SP0600-06-D-0391 – JAPAN – Price Increase

Dear Debora,

Good afternoon, please find below a claim for a price increase in Japan Sasebo
— This happened late last year, and USS-UBS Int. did not approach DESC for a claim even though massive losses were been incurred by this closure. USS-UBS Int had to buy and service US vessels with domestic product. USS-UBS Int. delivered every ship the amount requested and never let a delivery not happen even though a huge loss due to a closure of a Japanese facility. This equates to: \$445.40MT in extra costs with no rebate available as this the Japanese Government rules ad regs.

- The Japanese Government will not pay claims for rebates on domestic prices.

Total Loss for Sasebo during this closure:

All invoices are attached for your information

Taxes incurred as follows:

1. MGO TAX (USD350/MT)
2. VAT 5%
3. OIL IMPORT TAX (USD1.85/MT)

QUALITY ASSURED COMPANY



AS/NZS ISO 9001:2000
REGN. NO. 581

Australia • Asia • Oceania

Total MT cost – on average we incurred for a period of 2 months till we could buy bonded MGO creating a huge loss in one month.

Other costs: – incurred by USS-UBS Int.

We made and bought Flange because they are using a special shape flange....USD 2,000.00 each

We bought hoses USD 1,500 each

We hire the bunker crew, USD3, 000 (Coastal MGO barge is not for bunkers)

We want to move forward and find a resolution on the above problem which has now started but at the end of the day unforeseen circumstances have occurred in Japan that is no fault of USS-UBS Int. We request a price increase to cover major cost increases in the Japan region on bonded stock. USS-UBS Int. has had to wear a rather large loss due to circumstances beyond our control.

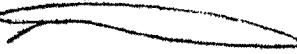
This is the information regarding the MGO production stoppage at the bonded stores:

In Sasebo, we have had a facility close on us due to their refinery in Osaka, about 450 miles away from Sasebo. Cosmo Oil has decreased their refining ratio sharply because they had a compliance problem in August. Moreover they have stopped MGO sales (bonded). This also affects price in Sasebo due to huge Barge costs and supply being limited to one other supplier of domestic product only.

Please find all my contact numbers 24hrs a day:

Thank you, for your valuable time.

Best regards,


Bill Rae
General Manager
USS-UBS Int.



USS - UBS INTERNATIONAL ABN 82 084 475 098
PO Box 579
MORNINGSIDE QLD 4170
Ph: 07 3902 0800
Fx: 07 3902 0600

Tax Invoice 10039

Date 07.03.2007
Account # 1383

Customer

DEFENSE FINANCE & ACCOUNTING SERVICE
Fuels Acctng & Payments Div
Attn: DFAS CO-CVDBBA
Po Box 182317 COLUMBUS OH 432186251

Port / Ship To :

DEFENSE FINANCE & ACCOUNTING SERVICE
SHIP NAME:
PORT:
JAPAN CONTRACT NO: SP0600-06-D-0391

P.O. No.	TERMS	REP	SHIP DATE	VIA	PROJECT
	10 Days				

QTY	U.O.M.	DESCRIPTION	PRICE	AMOUNT	GST
1	EACH	CLAIM DATED 7TH MARCH, 2007			0.00
1	EACH	USNS BRUCE HEEZEN			0.00
1	EACH	USNS DAHL			0.00
1	EACH	USNS WATSON			0.00
1	EACH	USNS WATKINS			0.00

 AS/NZS ISO 9001:2000 REGN. NO. 61	BANKING ACCOUNT DETAILS: ACCOUNT NAME: USS - UBS INTERNATIONAL BANK NAME: B.S.B: ACCOUNT: Please note Invoice in: UNITED STATES DOLLARS	SALE AMOUNT
		GST \$0.00
		TOTAL DUE (USD)
		AMOUNT PAID
		AMOUNT DUE



USS - UBS INTERNATIONAL ABN 82 084 475 088
 PO Box 579
 MORNINGSIDE QLD 4170
 Ph: 07 3902 0800
 Fx: 07 3902 0600

Tax Invoice 10454

Date 24/09/2007
 Account # 1383

Customer

DEFENSE FINANCE & ACCOUNTING SERVICE
 Fuels Acting & Payments Div
 Attn: DFAS CO-CVDBBA
 Pa Box 182317 COLUMBUS OH
 432188251

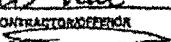
Port / Ship To :

CONTRACT NO: SP0600-08-D-0391

P.O. No.	TERMS	REP	SHIP DATE	VIA	DUUE DATE
	10 Days				

ITEM CODE	QTY	U.O.M.	DESCRIPTION	PRICE	AMOUNT	GST
0820-ONETIN	1		ORAL ORDER AS PER ATTACHED AMENDMENT NO P00004	50,783.663	550,783.66	0.00 0.00

 <small>ASIAN ISO 90002 REGD NO. 841</small>	BANKING ACCOUNT DETAILS: ACCOUNT NAME: USS - UBS INTERNATIONAL BANK NAME: NATIONAL AUSTRALIA BANK B.S.B: 084-391 ACCOUNT: 46507-3883		SALE AMOUNT \$3,550,783.66 GST \$0.00 TOTAL DUE (USD) \$3,550,783.66 AMOUNT PAID \$0.00 AMOUNT DUE \$3,550,783.66
	Please note Invoice In: UNITED STATES DOLLARS		

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT				1. CONTRACT ID CODE K	PAGE OF PAGES 1 2
2. AMENDMENT/MODIFICATION NO. PO0004	3. EFFECTIVE DATE See Block 16C	4. REQUOTATION/PURCHASE REQ. NO. N/A	5. PROJECT NO. (if applicable)		
6. ISSUED BY COOR AFIN: Francis Murphy/DESC-PHS Defense Energy Support Center 8725 John J. Kingman Rd., Suite 4950 Ft. Belvoir, VA 22060-6222 RH: (703) 767-8462/FAX: (703) 767-8506 Purchase Program 3.7 A	SP0600	7. ADMINISTERED BY (if other than Item 6) CODE			
8. NAME AND ADDRESS OF CONTRACTOR (incl. street, city, county, state, and ZIP Code) UBS PROVVEDORES PTY LTD dba USS-UBS INTERNATIONAL PO-BOX 579 QUEENSLAND AUS 4172 Bidder Code: U101 CAGE Code: ZBB12				<input checked="" type="checkbox"/>	9A. AMENDMENT OF SOLICITATION NO.
				X	9B. DATED (REF ITEM 11) 10A. MODIFICATION OF CONTRACT ORDER NO. SP0600-06-D-0391 10B. DATED (REF ITEM 13) 21-SEP-2006
CODE	FACILITY CODE				
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS					
<p><input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers <input type="checkbox"/> is extended <input type="checkbox"/> is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning <input type="checkbox"/> copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) by separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PLUS OR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and day specified.</p>					
12. ACCOUNTING AND APPROPRIATION DATA (If required SEE PAGE 2)					
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.					
<input type="checkbox"/> A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A. <input type="checkbox"/> B. THE ABOVE NUMBERED CONTRACT ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying officer, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF PAR 43 (D3D). <input type="checkbox"/> C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:					
<input checked="" type="checkbox"/> D. OTHER Specify type of modification and authority BILATERAL - PURSUANT TO TERMS & CONDITIONS OF CLAUSE 11.03-5 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (BUNKERS) (DESC JAN 2006), (d) DISPUTES					
E. IMPORTANT! Contractor [or sign] <input checked="" type="checkbox"/> [is] required to sign this document and return <input type="checkbox"/> copies to the issuing office.					
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCP section headings, including solicitation/contract subject matter where possible.) OVERSEAS BUNKERS SP0600-06-0013					
SEE PAGE 2					
15A. NAME AND TITLE OF SIGNER (Type or print) <i>Bill Pace (Director)</i>		15A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) DEBORAH D. WOOD Contracting Officer			
15B. CONTRACTOR/OFFICER  (Signature of person authorized to sign)	15C. DATE SIGNED <i>20-9-07</i>	15D. UNITED STATES OF AMERICA <i>Deborah D. Wood</i>	15E. DATE SIGNED <i>20-Sept-07</i>		
(Signature of Contracting Officer)					

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P60004
Page 2 of 2

1. On March 8, 2007, USS-UBS submitted a claim under Item 765-61 (Sasebo, Japan) in accordance with FAR 33.206 for \$3,550,783.66 for costs incurred in response to the Government's request for surge capabilities to meet requirements that did not materialize. USS-UBS claimed that it purchased fuel to meet the anticipated surge during the period December 2006 through March 2007, which it subsequently sold at a loss. This claim was processed under contract clause II.03-5(d) DISPUTES and FAR 52.233-1 DISPUTES.
2. Pursuant to subsequent review of the claim and responses from all concerned parties, the Contracting Officer has determined that the subject claim is valid and the Contractor will be paid the amount of \$3,550,783.66.

TOTAL SUM to be paid: \$3,550,783.66

3. The Contractor agrees that this modification settles all claims by the Contractor under the contract relative to Line Item 765-61 arising out of or in any way related to Military Sealift Command's request for surge capacity during the period November 1, 2006 through March 30, 2007, and hereby fully, finally and unconditionally releases and discharges the Government from any and all liability, claims, impact costs, demands, causes of action, and legal expenses, accrued, known or unknown, which the Contractor has or might have relating thereto, including, without limitation, all obligations of the Government to make further payments or to carry out any further undertakings. The Government reserves all rights under the contract, including but not limited to, the right to claim damages for any previous delivery of fuel.
4. All other terms and conditions of the contract remain unchanged.